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SENATE BILL 30

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO TAXATION; EXEMPTING PUBLICLY TRADED PARTNERSHIPS  
FROM INFORMATION RETURN FILING REQUIREMENTS PURSUANT TO THE  
WITHHOLDING TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-3-12 NMSA 1978 (being Laws 1999,  
Chapter 14, Section 3, as amended) is amended to read:

"7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH  
ENTITY--WITHHOLDING.--

A. A pass-through entity doing business in this  
state shall file an annual information return with the  
department on or before the due date of the entity's federal  
return for the taxable year. The information return shall be  
signed by the business manager or one of the owners of the  
pass-through entity.

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1           B. The information return required by this section  
2 shall contain all information required by the department,  
3 including:

- 4                   (1) the pass-through entity's gross income;  
5                   (2) the pass-through entity's net income;  
6                   (3) the amount of each owner's share of the  
7 pass-through entity's net income; and  
8                   (4) the name, address and tax identification  
9 number of each owner entitled to a share of net income.

10           C. A pass-through entity shall provide to each of  
11 its owners sufficient information to enable the owner to comply  
12 with the provisions of the Income Tax Act and the Corporate  
13 Income and Franchise Tax Act with respect to the owner's share  
14 of net income.

15           D. The pass-through entity shall deduct and  
16 withhold from each nonresident owner's share of net income an  
17 amount equal to the owner's share of net income multiplied by a  
18 rate set by department regulation. In the case of an owner  
19 that is an individual or entity not taxed as a corporation for  
20 federal income tax purposes for the taxable year, the rate  
21 shall not exceed the rate for composite returns. In the case  
22 of an owner that is a corporation or other entity taxed as a  
23 corporation for the taxable year, the rate shall not exceed the  
24 maximum rate for corporate income tax.

25           E. The provisions of Subsection D of this section

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1 shall not apply with regard to:

2 (1) the share of net income of a nonresident  
3 owner that has executed an agreement in accordance with  
4 regulations or instructions of the department that the owner  
5 will report and pay tax, if required, on its own return  
6 pursuant to the Income Tax Act or the Corporate Income and  
7 Franchise Tax Act; ~~or~~

8 (2) oil and gas proceeds subject to the Oil  
9 and Gas Proceeds Withholding Tax Act; or

10 (3) a publicly traded partnership as defined  
11 in Subsection (b) of Section 7704 of the Internal Revenue Code,  
12 as may be amended or renumbered, and that is not treated as a  
13 corporation pursuant to that section.

14 F. Amounts deducted from the owner's share of net  
15 income under the provisions of this section shall be a  
16 collected tax. No owner shall have a right of action against  
17 the pass-through entity for any amount deducted and withheld  
18 from the owner's share of net income."

19 Section 2. APPLICABILITY.--The provisions of this act are  
20 applicable to taxable years beginning on or after January 1,  
21 2005.